No. 14-940

IN THE

Supreme Court of the United States

SUE EVENWEL, *et al*, Appellants,

v.

GREG ABBOTT, GOVERNOR OF TEXAS, *et al.*, Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

BRIEF OF THE LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS *ET AL.* AS *AMICI CURIAE* IN SUPPORT OF APPELLEES

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Chapman v. Meier,
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Connor v. Finch,
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Hunter v. Underwood,
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Mont. Democratic Party v. Eaton,
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Ohio State Conf. of NAACP v. Husted,
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Veasey v. Perry,
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Wesberry v. Sanders,
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OTHER AUTHORITIES

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The American Voting Experience: Report and Recommendations of the Presidential Commission on Election Administration (Jan. 2014) ..... *passim*

Asian Americans Advancing Justice, *Voices of Democracy: Asian Americans and Language Access During the 2012 Elections* (Aug. 2013) 20

Asian American Justice Center, *Behind the Numbers: Post-Election Survey of Asian American and Pacific Islander Voters in 2012* (Apr. 2013) 20

Asian American Legal Defense and Education Fund, *Asian American Access to Democracy in the 2014 Elections* (Aug. 6, 2015) 20

Bryan Baker & Nancy Rytina, Office of Immigration Statistics, Dep't of Homeland Sec., *Estimates of the Lawful Permanent Resident Population in the United States: January 2013* (Sept. 2014) 27

Christopher Famighetti et al., Brennan Center for Justice, *Election Day Long Lines: Resource Allocation* (2014) 23

Thom File, U.S. Census Bureau, *The Diversifying Electorate—Voting Rates by Race and Hispanic Origin in 2012 (and Other Recent Elections)* (May 2013) 12, 13

Thom File, U.S. Census Bureau, *Who Votes? Congressional Elections and the American Electorate: 1978-2014* (July 2014) 12, 13

Matthew Gardner et al., Institute on Taxation and Economic Policy, *Undocumented Immigrants' State and Local Tax Contributions* (Apr. 2015) 29

Gary J. Gates & Frank Newport, *Special Report: 3.4% of U.S. Adults Identify As LGBT*, Gallup (Oct. 18, 2012) 14

Jody L. Herman, *The Potential Impact of Voter Identification Laws on Transgender Voters in the 2014 General Election* (Sept. 2014) 19

Michael C. Herron & Daniel A. Smith, *Congestion at the Polls: A Study of Florida Precincts in the 2012 General Election* 1 n.5 (June 24, 2013) 23

Immigration Policy Center, American Immigration Council, *Strength In Diversity: The Economic and Political Clout of Immigrants, Latinos, and Asians in the United States* (Jan. 2012) 29

Alexander Keysser, *The Right to Vote: The Contested History of Democracy in the United States* (2000) 17

Susan Mizner & Eric Smith, American Civil Liberties Union, *Access Denied* (Jan. 2015) 17

Jeffrey S. Passel et al., *Unauthorized Immigrant Totals Rise in 7 States, Fall in 14* (Pew Research Center 2014) 29

Myrna Perez, Brennan Center for Justice, *Voter Purges* (2008) 16

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Lisa Schur, *Reducing Obstacles To Voting for People With Disabilities*, White Paper for the Presidential Commission on Election Administration (June 22, 2013) 14, 22

Paul Taylor et al., Pew Hispanic Center, *An Awakened Giant: The Hispanic Electorate is Likely to Double by 2030* (Nov. 14, 2012) 28

Christopher Uggen et al., The Sentencing Project, *State-Level Estimates of Felon Disenfranchisement in the United States, 2010* (July 2012) 18

U.S. Bureau of Labor Statistics, *Foreign-Born Workers: Labor Force Characteristics—2014* (May 21, 2015) 29

U.S. Census Bureau, *Annual Estimates of the Resident Population by Sex, Age, Race, and Hispanic Origin for the United States and the States: April 1, 2010 to July 1, 2014* 26

U.S. Census Bureau, Voting and Registration in the Election of November 2014—Detailed Tables 12, 13

U.S. Citizenship and Immigration Servs., Dep't of Homeland Sec., Form G-1055 (Dec. 18, 2014) 28

INTEREST OF *AMICI CURIAE*

The Leadership Conference on Civil and Human Rights ("The Leadership Conference") is a coalition of more than 200 organizations committed to the protection of civil and human rights in the United States.[1] It is the nation's oldest, largest, and most diverse civil and human rights coalition. The Leadership Conference was founded in 1950 by three legendary leaders of the civil rights movement—A. Philip Randolph of the Brotherhood of Sleeping Car Porters; Roy Wilkins of the NAACP; and Arnold Aronson of the National Jewish Community Relations Advisory Council. Its member organizations represent people of all races, ethnicities, and sexual orientations. The Leadership Conference works to build an America that is inclusive and as good as its ideals, and it believes that every person in the United States deserves to be free from discrimination based on race, ethnicity, gender, or sexual orientation.

The Leadership Conference Education Fund ("The Education Fund") is the research, education, and communications arm of The Leadership Conference. It focuses on documenting discrimination in American society, monitoring efforts to enforce civil rights legislation, and fostering better understanding of issues of prejudice.

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[1] The parties' blanket consents to the filing of *amici curiae* briefs are on file with the Clerk. No counsel for a party authored any part of this brief; no party or party's counsel made a monetary contribution intended to fund the preparation or submission of this brief; and no person other than *amici curiae* or their counsel made a monetary contribution to the brief's preparation or submission.

A list of The Leadership Conference's members is set forth in Appendix A. Several organizations also join as individual signatories to this brief. Those organizations are identified and their interests are set forth in Appendix B.

SUMMARY OF ARGUMENT

The State of Texas complied with the Equal Protection Clause of the Fourteenth Amendment when it drew state legislative districts that were approximately equal in total population. In *Reynolds v. Sims*, 377 U.S. 533 (1964), this Court held that "the fundamental principle of representative government in this country is one of equal representation for equal numbers of people." *Id.* at 560-61. Based on that principle, *Reynolds* held that the Equal Protection Clause requires a state to make a good faith effort to draw districts "as nearly of equal population as is practicable." *Id.* at 577. In keeping with the principle of equal representation for equal numbers of people, *Reynolds* focused on disparities in total population as measured by the most recent decennial census. Subsequent cases from this Court have continued to focus on total population as the touchstone for assessing compliance with *Reynolds*, and for more than fifty years, state and local governments have overwhelmingly attempted to draw district lines so as to equalize total population.

Largely ignoring this history, appellants now argue that *Reynolds* should be reinterpreted to require states to equalize some other metric, such as registered voters, "non-suspense" registered voters, or citizen voting age population ("CVAP"). The Court should reject these arguments and reaffirm that a redistricting plan satisfies the Equal Protection

Clause's "one person, one vote" requirement if districts are approximately equal in total population.

In Part I below, we show that, absent extraordinary circumstances, total population is the proper basis to use for redistricting because it ensures that all people—not merely those who are eligible to vote or who actually cast ballots—are represented in the political process. At any given point in time, there are significant groups of people residing in the United States who are not legally eligible to vote. The largest groups are children under the age of 18 and noncitizen immigrants, including many who are not yet eligible for naturalization but will eventually become eligible, others who do not seek naturalization, and many others who desire to become citizens but are deterred from doing so by the complexities and cost of the naturalization process. These populations are fluid; between decennial census counts, many people under the age of 18 will attain voting age, and many noncitizens will be naturalized. Many other people are legally eligible to vote, but face significant legal and practical barriers to registration and exercise of the franchise. Yet all of these individuals have a deep stake in the workings of government; elected officials create laws and policies that govern the total population within their jurisdictions. Indeed, government actions and policies will affect their most basic and fundamental rights. The fact that people cannot or do not actually vote does not mean that they are not entitled to representation in the political process in accordance with their numbers.

Contrary to appellants' assertions, a total population standard for redistricting is consistent with the Fourteenth Amendment, which explicitly incorporates the principle of equal representation for equal

numbers of people. It is also consistent with longstanding practice and legal precedent in the United States, including *Reynolds* and numerous subsequent decisions of this Court that have continued to focus solely on whether there are unacceptable disparities in total population. The Court has never suggested that a districting plan that substantially equalizes the total number of persons from one district to the next—like the Texas plan at issue here—is constitutionally infirm if it fails to equalize the number of registered voters, CVAP, or any metric other than total population. Even if states are permitted, under some circumstances, to utilize other metrics, they certainly are not required to do so.

In Part II, we show that registered voters and actual voters are not a reliable or appropriate basis for redistricting, whether for purposes of drawing Congressional districts, state legislative districts, or districts for local government bodies. As this Court recognized in *Burns v. Richardson*, 384 U.S. 73 (1966), registered and actual voters may vary wildly from one election to the next, are subject to political manipulation, and use of these numbers as a basis for redistricting may perpetuate the effects of existing discriminatory practices. *See id.* at 91-93. Although these are all valid concerns, we focus primarily on the discriminatory impact of a registered or actual voter standard.

There are many legal and practical barriers to registration and voting in the United States, and these barriers tend to have a disproportionate impact on racial and ethnic minorities, younger voters, the poor, and people with disabilities. As a result, registration and voting rates are consistently lower for these groups than for the population at large. Chang-

ing from a total population standard to a registered voter or actual voter standard would reinforce and exacerbate existing exclusionary and potentially discriminatory barriers to registration and voting and shift political participation and power away from groups that are already disadvantaged in the political process.

In Part III, we show why using CVAP as the basis for redistricting is also deeply problematic. In particular, switching from a total population standard to a CVAP standard would disproportionately exclude racial and ethnic minorities from the population base. Thus on balance, use of CVAP as a basis for redistricting would have a discriminatory impact on historically disenfranchised minority and immigrant communities, depriving them of the right to be adequately represented and the political power to which they would be entitled if fully counted as whole persons in the population base.

There are two reasons for the disparities between total population and CVAP. First, minority communities are on average significantly younger than the population at large, meaning that a higher percentage of these communities are under the age of 18. The overwhelming majority of people under 18 are citizens who will eventually be able to vote, and states can legitimately decide that they should be included in the population base. Second, some minority groups, such as Latinos and Asian Americans, contain relatively large numbers of noncitizens. Notably, many of these people are eligible to become U.S. citizens, and many more will become eligible upon satisfying the five-year residency requirement. In many cases, however, individuals seeking to naturalize are deterred by institutional barriers which include the

cost and complexity of the naturalization process. In any case, whether or not noncitizens plan to seek naturalization or are eligible to do so, they are an integral part of American society and equally subject to the laws that apply to citizens. States may reasonably conclude that they should be represented in the political process.

ARGUMENT

I. Total Population Is the Most Appropriate Basis for Redistricting, and Is Consistent With the Constitution, Longstanding Practice, and Decisions of This Court.

Absent extraordinary circumstances, total population is the proper basis to use for redistricting because it assures that all people in a given community are represented in its government.[2] Many people are legally ineligible to vote, including children, immigrants who have not yet been naturalized, and in some states, people who have been convicted of a felony or deemed mentally incompetent. Many others are theoretically eligible to vote, but face legal and

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[2] In this brief, we focus solely on the proper metric to use for ensuring compliance with the equal population requirement set forth in *Reynolds*. Other metrics, such as CVAP, may be appropriate for other purposes, such as whether a particular districting scheme dilutes minority voting strength in violation of section 2 of the Voting Rights Act, 52 U.S.C. § 10301. That is because the § 2 inquiry does not address population equality, but rather turns in part on whether minority voters are sufficiently numerous to enable them to elect candidates of their choice. *See, e.g., Thornburg v. Gingles*, 478 U.S. 30, 50 n.17 (1986). Thus, the inquiry into CVAP data in potential districts under section 2 of the Voting Rights Act relates to predictions of remediability—whether electoral outcomes might change as to ameliorate the harms of vote dilution.

practical barriers to the exercise of that right. But the fact that certain people cannot or do not vote should not mean that they and their families forfeit all rights to representation in the political system.

In our democracy, elected officials do not simply represent the people who voted for them, or the people who are eligible to vote. They are expected to, and do, represent the interests of all of the people who live in their respective districts. After all, those who cannot or do not vote are still impacted by government in a wide variety of ways. They attend public schools and universities, walk or drive along public streets, and utilize a wide variety of other government services and benefits. They pay taxes and are required to comply with the same laws that apply to voters. In short, they are important members of society, and should be entitled to representation in government according to their numbers.

Appellants argue that the Fourteenth Amendment somehow precludes states from using total population as the basis for redistricting and requires states instead to equalize some other metric (such as registered voters or CVAP). This assertion is, at the very least, contrary in spirit to section 2 of the Fourteenth Amendment, which provides that Representatives in Congress "shall be apportioned among the states according to their respective numbers, counting the ***whole number of persons*** in each State." U.S. Const. amend XIV, § 2 (emphasis added).[3] This con-

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[3] Section 2 of the Fourteenth Amendment superseded the portion of Article I, Section 2, which based apportionment on the "whole Number of free Persons" in each state, plus "three fifths of all other Persons," *i.e.*, slaves. U.S. Const. art. I, § 2. But even though slaves were not counted as full people under this stand-

stitutional provision reflects the principle that all "persons" in a State—whether or not they can or do vote—are entitled to representation in Congress. It cannot be that the same Fourteenth Amendment that requires Representatives to be apportioned among the States based on total population somehow forbids use of total population for redistricting within the States.

Appellants' contorted reading of the Fourteenth Amendment finds no support either in historical practice or the decisions of this Court. This Court recognized in *Wesberry v. Sanders*, 376 U.S. 1 (1964), that the requirement that Representatives be apportioned among the states "according to their respective numbers" also mandated that Congressional districts have equal numbers of people. *Reynolds* extended that principle to state and local government bodies, holding that "the fundamental principle of representative government in this country is one of equal representation for equal numbers of people." 377 U.S. at 560-61.[4] Based on that principle, *Reynolds* held that the Equal Protection Clause requires a state to make a good faith effort to draw districts "as nearly of equal population as is practicable." *Id.* at 577. The Court expressly focused on disparities in total population. *See id.* at 545, 547, 549-50, 569.

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ard, the apportionment was based on a count of all persons resident within a state, including those not eligible to vote.

[4] *See also Wesberry v. Sanders*, 376 U.S. 1, 18 (1964) (concluding after review of Constitutional Convention proceedings that "our Constitution's plain objective" was to "mak[e] equal representation for equal numbers of people the fundamental goal for the House of Representatives").

Since *Reynolds*, the Court has developed and consistently applied a framework for deciding "one person, one vote" cases, which likewise focuses on disparities in total population. The framework focuses on the maximum deviation from "ideal" district size—*i.e.*, the total population divided by the number of seats. For state and local government bodies, a maximum population deviation of up to 10% is generally acceptable; larger deviations create a *prima facie* case of discrimination that must be justified by the state.[5] Congressional districts are held to a stricter standard, which requires states to achieve population equality "as nearly as is practicable."[6] Under either standard, however, the touchstone is equality of total population.

The one case in which the Court has seemed to countenance a departure from a total population standard is *Burns v. Richardson*, 384 U.S. 73 (1966). That case, however, involved special and unusual circumstances. In the immediate wake of *Reynolds*, Hawaii was required to reapportion its state senate to comply with the equal population requirement, and adopted an interim redistricting plan for the 1966 election. Hawaii had "special population problems" *id.* at 94, due to the fact that there was a large

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[5] *See, e.g., Brown v. Thompson*, 462 U.S. 835, 842-43 (1983). For other cases applying these standards based on total population see *Bd. of Estimate of City of N.Y. v. Morris*, 489 U.S. 688, 700-01 & n.7 (1989); *Connor v. Finch*, 431 U.S. 407, 416-18 & n.13 (1977); *Chapman v. Meier*, 420 U.S. 1, 21-26 (1975); *Mahan v. Howell*, 410 U.S. 315, 319-30 (1973); *Gaffney v. Cummings*, 412 U.S. 735, 750-51 (1973); *White v. Regester*, 412 U.S. 755, 761 (1973); *Swann v. Adams*, 385 U.S. 440, 442-46 (1967).

[6] *See Karcher v. Daggett*, 462 U.S. 725, 730 (1983); *Kirkpatrick v. Preisler*, 394 U.S. 526, 530-31 (1969).

and fluctuating population of military personnel and tourists concentrated on the island of Oahu, such that total population as reported by the census may have presented a distorted picture of the state's population. *Id.* at 94-95. Accordingly, the state attempted to equalize the number of registered voters. The Court held that states are not required to use total population as measured by the census as the basis for redistricting, and that they may exclude "aliens, transients, short-term or temporary residents, or persons denied the vote for conviction of crime" from the population base. *Id.* at 91-92. It held that the use of registered or actual voters as the population base was generally problematic, *id.* but nonetheless affirmed the state's plan only because it "substantially approximated" the results that would have been achieved using state citizen population as the base. *Id.* at 96. The Court was careful to note that its holding was limited to the specific facts before it and that it was not a blanket endorsement of using registered voters as an apportionment base. *Id.* ("We are not to be understood as deciding that the validity of the registered voters basis as a measure has been established for all time or circumstances, in Hawaii or elsewhere.").

In *amici*'s view, notwithstanding *Burns*, there remains a substantial question whether states may utilize a metric other than total population for redistricting purposes.[7] But the Court need not decide that question for purposes of this case. Even if states are not required to rely on total population as measured by the census, the plain language of the Four-

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[7] *Cf. Kirkpatrick*, 394 U.S. at 534 ("There may be a question whether distribution of congressional seats except according to total population can ever be permissible under Art. I, § 2.").

teenth Amendment and the consistent practice of this Court make it clear that they are permitted to do so. The Court should reaffirm that total population is an appropriate basis for redistricting.

II. Registered Voters and Actual Voters Are Not a Reliable or Appropriate Basis for Redistricting Because of Barriers to Registration and Voting That Disproportionately Affect People of Color, Youth, the Poor, and People With Disabilities.

Appellants suggest that states should be required to redistrict so as to equalize registered voters (or "non-suspense" registered voters). For all of the reasons set forth in *Burns*, registered voters and actual voters are not a reliable or appropriate basis for redistricting. As *Burns* explains:

> "Such a basis depends not only upon criteria such as govern state citizenship, but also upon the extent of political activity of those eligible to register and vote. Each is thus susceptible to improper influences by which those in political power might be able to perpetuate underrepresentation of groups constitutionally entitled to participate in the electoral process, or perpetuate a ghost of prior malapportionment. Moreover, fluctuations in the number of registered voters in a given election may be sudden and substantial, caused by such fortuitous factors as a peculiarly controversial election issue, a particularly popular candidate, or even weather conditions." 384 U.S. at 92-93 (internal quotation marks omitted).

All of these concerns are as valid today as they were in 1966 when *Burns* was decided. For example,

voting and registration rates still fluctuate significantly from one election to the next, with rates being significantly higher in presidential election years.[8] We focus below, however, on the discriminatory impact of using registered voters or actual voters as the basis for redistricting decisions. This impact stems from the many legal and practical barriers to registration and voting that continue to exist in American society, and that disproportionately affect racial and ethnic minorities, younger and poorer Americans, and people with disabilities.

Both registration and voter turnout rates vary significantly by race and ethnicity. For example, in the 2014 congressional elections, 68.1% of non-Hispanic white citizens of voting age (*i.e.*, 18 years of age or older) were registered to vote. The comparable registration rate was 63.4% for African Americans, 51.3% for Latinos, and 48.8% for Asian Americans.[9] The voting rate (*i.e.*, voters as a percentage of CVAP) was 45.8%, for non-Hispanic whites, 39.7% for African Americans, and only 27.0% for Latinos and

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[8] *See* Thom File, U.S. Census Bureau, *The Diversifying Electorate—Voting Rates by Race and Hispanic Origin in 2012 (and Other Recent Elections* 2 (May 2013) (hereinafter, "2012 Census Election Report"); Thom File, U.S. Census Bureau, *Who Votes? Congressional Elections and the American Electorate: 1978-2014*, at 1 (July 2014) (hereinafter "2014 Census Election Report").

[9] *See* U.S. Census Bureau, Voting and Registration in the Election of November 2014—Detailed Tables, Table 2, *available at* http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2014/tables.html. We use the terms "African American" to refer to the group designated by the Census Bureau as "Black Alone," "Asian American" to refer to the group designated as "Asian Alone," and "Latino" and "Hispanic" interchangeably to refer to the group designated by the Census as "Hispanic."

27.1% for Asian Americans.[10] These disparities have remained relatively consistent for many years. Although registration and voting rates are higher in presidential election years, the same types of disparities occur in both presidential election and non-presidential election years.[11]

Registration and voting rates also vary significantly by age and income. For example, in the 2014 election, the registration rate for citizens in the 18 to 24 age bracket was 43.0%, and the voting rate was 18.5%. Both registration and voting rates climb steadily as voters age. For the 65 to 74 age bracket, the registration rate was 77.2% and the voting rate was 63.2%.[12] Similarly, voting and registration rates climb steadily as family income increases. For persons with family incomes under $10,000, the registration rate in 2014 was 51.7% and the voting rate 24.5%. For persons with family incomes of $150,000 and over, the registration rate was 79.5% and the voting rate was 56.6%.[13]

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[10] *Id.*; *see also* 2014 Census Election Report, *supra* note 8, at 4. Looking at the data another way, in 2014, the percentage of non-Hispanic white voters exceeded their share of the voting-eligible population by 6.4%, whereas the percentage of Hispanic voters lagged their share of the voting-eligible population by 4.1%. *Id.* at 9.

[11] *See* 2014 Census Election Report, *supra* note 8, at 4, 9; 2012 Census Election Report, *supra* note 8, at 3.

[12] U.S. Census Bureau, Voting and Registration in the Election of November 2014—Detailed Tables, Table 7, *available at* http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2014/tables.html.

[13] *Id.*

These factors are all closely linked, since racial and ethnic minority groups are, on average, younger and poorer than non-Hispanic whites. Notably, the confluence of these factors is likely to have a special impact on members of the lesbian, gay, bisexual or transgender ("LGBT") community. A 2012 Gallup survey found that nonwhites and younger Americans are more likely to identify as LGBT, and that LGBT Americans tend to have lower incomes than non-LGBT individuals.[14]

Finally, there are also disparities in registration and voting rates based on disability status. These disparities tend to be more pronounced in presidential election years. One recent study found that in the 2012 election, among people with disabilities, 69.2% reported being registered to vote, compared to 71.5% for people without disabilities. Among those who were registered, 82.1% voted, as compared to the 87.5% of registered citizens without disabilities who voted.[15] From 2008 to 2012, when other demographic characteristics (such as age, gender, race and ethnicity, and marital status) are held constant, the turnout gap between persons with disabilities and those without disabilities is about 12 percentage points.[16]

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[14] Gary J. Gates & Frank Newport, *Special Report: 3.4% of U.S. Adults Identify as LGBT*, Gallup (Oct. 18, 2012), *available at* http://www.gallup.com/poll/158066/special-report-adults-identify-lgbt.aspx.

[15] *See* Lisa Schur, *Reducing Obstacles to Voting for People With Disabilities*, White Paper for Presidential Commission on Election Administration, at 1-2 (June 22, 2013), *available at* http://vote.caltech.edu/content/reducing-obstacles-voting-people-disabilities.

[16] *Id.* at 2.

Although there are doubtless many reasons for these persistent disparities, they result in large part from the cumulative effect of various legal and practical barriers to registration and voting that exist in American society.

As a starting point, voter registration records in the United States are notoriously unreliable. The Presidential Commission on Election Administration recently noted that most statewide voter registration lists aggregate county and local records that exist on paper, and "[w]ith so many jurisdictions responsible for the registration lists, their quality is uneven and too many records are inaccurate, obsolete or never entered into the system."[17] Errors in voter registration records are widespread. The Commission reported that as many as 8% of registration records, representing 16 million people, are invalid or significantly inaccurate, and that in some states, more than 15% of records on registration lists have been inaccurate.[18] Thus, for example, "[v]oters who think they registered or updated their address at the DMV show up at polling locations only to find out they are *not* registered or are in the wrong polling location."[19]

Adding to the problem, election officials regularly conduct purges of voter registration records. Properly done, voter list maintenance is a way to improve the accuracy of registration records, but in practice, purges are often conducted through processes that are "shrouded in secrecy, prone to error, and vulner-

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[17] *The American Voting Experience: Report and Recommendations of the Presidential Commission on Election Administration* 15 (Jan. 2014) (hereinafter "*American Voting Experience*").

[18] *Id.* at 23.

[19] *Id.*

able to manipulation."[20] For example, in advance of the primary and general elections in 2012, Florida conducted two purges to remove suspected non-citizens from the voter rolls, with the result that some naturalized citizens were improperly purged.[21] Regardless of intention, purges of this nature are likely to have a discriminatory impact on minority registration. A related problem is the phenomenon of "voter caging," in which a group sends non-forwardable mail to a list of voters at their registration address, and then requests that election officials cancel the registration of voters whose mailing is returned as undeliverable.[22] This method of identifying ineligible voters is highly unreliable and can be used to selectively target particular groups, including racial and ethnic minorities.

Another problem is simply the difficulty of the registration process. Although the National Voter Registration Act, 52 U.S.C. §§ 20501 *et seq.* requires state motor vehicle departments and public assistance agencies to provide registration materials and ensure

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[20] *See generally* Myrna Perez, Brennan Center for Justice, *Voter Purges* (2008), *available at* https://www.brennancenter.org/publication/voter-purges.

[21] *See Arcia v. Fla. Sec'y of State*, 772 F.3d 1335 (11th Cir. 2014) (holding that purges violated NVRA because they were conducted less than 90 days before elections).

[22] Perez, *supra* note 20, at 32; *see also Mont. Democratic Party v. Eaton*, 581 F Supp. 2d 1077 (D. Mont. 2008) (challenges filed to 6,000 voters in counties with high concentration of Democratic voters based on comparison of registration records to Postal Service change of address registry); *Miller v. Blackwell*, 348 F. Supp. 2d 916 (S.D. Ohio 2004) (challenges filed to 35,000 newly registered Ohio voters based on allegations that mailings had been returned).

that the communities they serve have the opportunity to vote, the Presidential Commission on Election Administration found widespread noncompliance with these laws.[23] The Commission found that increased use of online voter registration would make it easier for voters to register, but as of August 2013, only 19 states had authorized or implemented a complete online voter registration system.[24] Moreover, many of the states that do offer online voting registration require significant improvements. For example, many online registration systems are not fully accessible to voters with disabilities.[25]

Felon disenfranchisement laws also have a significant impact on minority voter registration in some jurisdictions. Many of these laws date to the Jim Crow era, and were enacted for the purpose of keeping minorities from voting.[26] Regardless of their intent, felon disenfranchisement laws continue to have

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[23] *American Voting Experience*, *supra* note 17, at 17.

[24] *Id.* at 23-24.

[25] Susan Mizner & Eric Smith, American Civil Liberties Union, *Access Denied* (Jan. 2015), *available at* https://www.aclu.org/feature/access-denied.

[26] *See Hunter v. Underwood*, 471 U.S. 222 (1985) (Alabama felon disenfranchisement law adopted in 1901 was "motivated by a desire to discriminate against blacks on account of race and the section continues to this day to have that effect"); Alexander Keysser, *The Right to Vote: The Contested History of Democracy in the United States* 111-12 (2000) (discussing felon disenfranchisement laws as one of several techniques adopted in Jim Crow Era, and noting that "[t]he overarching aim of such restrictions, usually undisguised, was to keep poor and illiterate blacks—and in Texas, Mexican Americans—from the polls"); *id.* at 162 (noting that felon disenfranchisement laws in the South often "target[ed] minor violations of the law that could be invoked to disenfranchise African Americans").

a negative and disproportionate effect on minority voting rights. A study by the Sentencing Project concluded that, as of 2010, roughly 7.7% of the African American voting age population—roughly one in thirteen—was disenfranchised, as compared to 1.8% of the non-African American population. In three states—Florida, Virginia, and Kentucky—more than one in five African Americans is disenfranchised.[27]

There are also numerous legal and practical barriers to voting that tend to disproportionately affect racial and ethnic minorities and people with disabilities. In recent years, many states have enacted changes to their registration and voting procedures that make it more difficult and burdensome to vote. For example, several states have enacted new voter identification laws. These laws may have both the purpose and effect of discriminating against minority voters. Texas, for example, enacted one of the nation's strictest voter identification laws in 2011. A District Court concluded that both that the law would have a discriminatory impact against Latinos and African Americans and that it was imposed with an unconstitutional discriminatory purpose.[28] The Fifth Circuit recently affirmed the finding of discriminatory effect, though it vacated the discriminatory purpose claim and remanded for further considera-

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[27] *See* Christopher Uggen et al., The Sentencing Project, *State-Level Estimates of Felon Disenfranchisement in the United States, 2010*, at 1-2 (July 2012), *available at* http://www.sentencingproject.org/detail/publication.cfm?publication_id=400.

[28] *Veasey v. Perry*, 71 F. Supp.3d 627, 633 (S.D. Tex. 2014), *aff'd in part, rev'd in part sub nom. Veasey v. Abbott*, 796 F.3d 487 (5th Cir. 2015).

tion.[29] As this case illustrates, regardless of the motive behind such laws, they still may have a discriminatory impact on minority voters.[30] Other types of laws that may have a disparate impact on minority voters include laws eliminating or restricting such practices as same-day registration or early voting, which are frequently used by minority voters.[31]

Many minority voters also face discrimination at polling places. For example, the language minority population in the United States grew from 23 million in 1980 to 59.5 million in 2010—a 158% increase.[32] Some 20% of the population speaks a language other than English at home, and 42% of these people report being limited-English proficient—*i.e.*, having

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[29] *Veasey v. Abbott*, 796 F.3d 487 (5th Cir. 2015).

[30] Such laws are also likely to have an impact on transgender voters, who face unique challenges to obtaining accurate government identification. *See* Jody L. Herman, *The Potential Impact of Voter Identification Laws on Transgender Voters in the 2014 General Election* (Sept. 2014), *available at* http://williamsinstitute.law.ucla.edu/wp-content/uploads/voter-id-laws-september-2014.pdf.

[31] *See League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224 (4th Cir. 2014) (affirming preliminary injunction against law eliminating same-day registration and prohibiting counting of out-of-precinct ballots); *Ohio State Conf. of NAACP v. Husted*, 768 F.3d 524 (6th Cir.) (affirming preliminary injunction against law reducing number of early voting days, where evidence showed that African American and indigent voters used early voting more frequently that white and affluent voters), *vacated*, No. 14-3877, 2014 WL 10384647 (6th Cir. Oct. 1, 2014).

[32] Camille Ryan, U.S. Census Bureau, *Language Use in the United States: 2011*, at 7, *available at* https://www.census.gov/prod/2013pubs/acs-22.pdf.

some difficulty with the English language.[33] Many eligible voters within this considerable segment of the American population encounter significant difficulty in exercising their right to vote.[34] One study suggests that turnout for language-minority voters was 9% lower than turnout by those who do not have language barriers.[35] And it is not hard to see why. Translated election materials and bilingual election workers are too frequently unavailable to those who need them.[36] The Presidential Commission also found that many jurisdictions fail to comply with Sections 203 and 208 of the Voting Rights Act, which require poll workers to provide language assistance in communities with large non-English speaking populations and allow voters who are unable to read

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[33] *Id.* at 2, 4. The current definition of limited English proficiency ("LEP") is persons who speak English less than "very well." The Census Bureau has determined that most respondents overestimate their English proficiency and therefore, those who answer other than "very well" are deemed LEP. See H.R. Rep. No. 102-655 (1992), at 8, *reprinted* in 1992 U.S.C.C.A.N. 772.

[34] *See, e.g.*, Asian American Legal Defense and Education Fund, *Asian American Access to Democracy in the 2014 Elections*, at 14-28 (August 6, 2015), *available at* http://aaldef.org/Access%20to%20Democracy%20Report%202012.pdf.

[35] Asian American Justice Center, *Behind the Numbers: Post-Election Survey of Asian American and Pacific Islander Voters in 2012*, at 9 (Apr. 2013), *available at* http://www.advancingequality.org/news-media/publications/behind-numbers-post-election-survey-asian-americans-and-pacific-islander.

[36] *Id.* at 10; Asian Americans Advancing Justice, *Voices of Democracy: Asian Americans and Language Access During the 2012 Elections*, at 10-13 (Aug. 2013), *available at* http://dww.advancingjustice-aajc.org/sites/aajc/files/Full-layout-singlesv1-072313.pdf.

ballots to gain assistance from a person of their choice.[37] It further noted that:

> "Language difficulties can affect voter participation throughout the electoral process. If ballot materials and election agency websites are only in English, then voters with limited English will be less able to navigate the registration process. Inadequate supplies of bilingual poll workers or ballots in other languages will make it more difficult for them to vote. These problems are then compounded for certain groups, such as Alaskan Native voters, who face additional logistical problems due to other forms of geographic and social isolation from election authorities."[38]

In some cases, minority voters face not only lack of adequate assistance but outright hostility from poll workers. For example, in Berks County, Pennsylvania, a federal District Court concluded that there was substantial evidence of hostile and unequal treatment of Hispanic voters. These included situations where poll workers turned away or refused to deal with Hispanic voters, made "rude, hostile and racist comments" in their presence, and required Hispanic voters to prove their residency while not requiring other voters to do so.[39] While this may be an extreme example, it is not unique, and it is illustrative of the kinds of barriers many minority voters continue to face today that may have a significant impact on voter turnout.

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[37] *American Voting Experience*, *supra* note 17, at 16.

[38] *Id.* (footnotes omitted).

[39] *United States v. Berks Cnty.*, 250 F. Supp. 2d 525, 529, 539 (E.D. Pa. 2003)

Discriminatory treatment at polling places is also a problem for voters with disabilities. The Presidential Commission also noted "the continued inaccessibility of many polling places and voting machines, as well as more direct impediments such as statutory bans on voting faced by those with cognitive impairments," as well as concerns about the training of poll workers and election officials.[40] A nationally representative survey following the 2012 elections found that 30% of voters with disabilities reported difficulty in voting at a polling place in 2012, as compared with 8% of voters without disabilities.[41] The most common problems included reading or seeing the ballot, understanding how to vote or use the voting equipment, waiting in line, and finding or getting to the polling place.[42] A recent decision from the Second Circuit illustrates some of the most serious problems, affirming a District Court decision that the New York City Board of Elections had violated the Americans with Disabilities Act and the Rehabilitation Act by failing to provide persons with disabilities meaningful access to polling places.[43] The court found "pervasive and recurring barriers" at poll sites, including "dangerous ramps at entrances deemed 'accessible,' inadequate signage directing voters with disabilities to accessible entrances or voting areas, blocked entryways or pathways, and inaccessible interior spaces inside voting areas."[44]

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[40] *American Voting Experience*, *supra* note 17, at 16-17.

[41] *Schur*, *supra* note 15, at 4.

[42] *Id.*

[43] *Disabled in Action v. Bd. of Elections*, 752 F.3d 189 (2d Cir. 2014)

[44] *Id.* at 191, 199.

Minority communities also bear the burden of inadequate resources being allocated to election administration. Long wait times at polling places are the most visible indication of this problem. The Presidential Commission found that in the 2012 election, over five million voters experienced wait times of over an hour, and an additional five million experienced wait times between half an hour and an hour.[45] This problem does not affect all jurisdictions equally. Another study has found that voters in precincts with higher percentages of more minorities experienced longer waits and that those precincts tended to have fewer machines.[46] For example, in South Carolina, the 10 precincts with the longest waits had, on average, more than twice the percentage of African American registered voters (64%) than the statewide average (27%), and in Maryland, the ten precincts with the lowest number of machines per voter had, on average, more than double the percentage of Latino voting age citizens (19%) as the statewide average (7%).[47] Furthermore, long lines may deter voter participation.[48]

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[45] *American Voting Experience*, *supra* note 17, at 13.

[46] Christopher Famighetti et al., Brennan Center for Justice, *Election Day Long Lines: Resource Allocation* 1 (2014), *available at* https://www.brennancenter.org/publication/election-day-long-lines-resource-allocation.

[47] *Id.*

[48] *See, e.g.*, Michael C. Herron & Daniel A. Smith, Advancement Project, *Congestion at the Polls: A Study of Florida Precincts in the 2012 General Election* 1 n.5 (June 24, 2013) ("There seems to be little doubt that many prospective voters who endured long lines ended up leaving the queue; others, upon seeing a long line, decided not to join the queue in the first place.").

In short, a wide variety of both legal and practical barriers impact people's ability to register and vote, and these barriers tend to have a disparate impact on racial and ethnic minorities and people with disabilities. The foregoing examples are merely intended as illustrations, not as a comprehensive list. The same problems do not necessarily exist to the same degree in all jurisdictions, even within the same state. These problems help to illustrate that the American voting system is far from perfect and that these imperfections disproportionately affect some groups more than others. Using registered voters or actual voters as the basis for redistricting would reinforce and exacerbate these discriminatory effects.

For all of these reasons, the Court should hold that registered voters and actual voters are not a reliable or appropriate basis for redistricting.

III. Assuming That CVAP Is a Constitutionally Permissible Basis for Redistricting, States Can Reasonably Find That Total Population Is Fairer and More Appropriate.

The other metric identified by plaintiffs as a possible basis for redistricting is CVAP.. In the view of *amici*, use of CVAP is questionable, since the Equal Protection Clause by its terms applies to all persons within a State's jurisdiction, including both children and noncitizens.[49] But regardless of whether use of

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available at http://b.3cdn.net/advancement/f5d1203189ce2aabfc_14m6vzttt.pdf.

[49] *See, e.g., Plyler v. Doe*, 457 U.S. 202, 210-16 (1982) (finding that noncitizen "aliens" unlawfully present in United States are still "persons" entitled to equal protection under the Fourteenth Amendment and that it would be unconstitutional for states to deny noncitizen children equal access to public education).

CVAP is permissible, it certainly should not be ***required***. States may reasonably conclude that total population is a fairer and more appropriate basis for redistricting than CVAP for a number of reasons. In particular, using CVAP rather than total population would disproportionately affect minority communities and unfairly deprive them of full representation in their government.

Using CVAP rather than total population as the basis for redistricting would have a significant disparate impact on racial and ethnic minority groups. If such a standard were applied uniformly across the nation, it would exclude only 21% of non-Hispanic whites from the population base. In contrast, it would exclude approximately 55% of the Latino population, 45% of the Asian American population, 30% of the African American population, 30% of the Native Hawaiian/Pacific Islander population, and 31% of the American Indian/Alaskan Native population.[50] Thus switching to CVAP would result in a disproportionate exclusion of racial and ethnic minorities from the population base. This would amount to a massive shift in political power away from groups that are already disadvantaged in the political process and further concentrate power in the hands of a white plurality that does not adequately represent the full diversity of the total population.

There are two reasons for these disparities between total population and CVAP First, minority communities are significantly younger, on average, than the general population, with the result that the percentage of people under the age of 18 is higher in these communities than in the population at large.

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[50] See calculations and data in Appendix C.

As of 2014, the median age for the U.S. population as a whole was 37.2 years, and the median age for non-Hispanic whites was 42.0 years. In contrast, Latinos, the nation's youngest ethnic group, had a median age of 27.3 years. Other minority groups are also younger than the general population. The median age was 32.7 for African Americans, 31.7 for American Indians and Alaska Native, 35.4 for Asian Americans, and 29.7 for Native Hawaiians and Other Pacific Islanders.[51]

Notably, the overwhelming majority of those under 18 who would be excluded from the population base under a CVAP standard are U.S. citizens. For example, 95% of Latinos, 87% of Asian Americans, and 98% of African Americans under the age of 18 are citizens.[52] Over the course of the ten years that a redistricting plan is typically in effect, a substantial portion of the underage population will turn 18 and become eligible to vote. Moreover, citizens under the age of 18 are deeply affected by a variety of government actions, including among other things actions relating to public education. This Court and the States can reasonably conclude that citizens should not be excluded from the population base for redistricting purposes simply because they have not yet reached voting age.

The second reason for the disparity between CVAP and total population is that some minority groups

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[51] U.S. Census Bureau, *Annual Estimates of the Resident Population by Sex, Age, Race, and Hispanic Origin for the United States and the States: April 1, 2010 to July 1, 2014, available at* http://www.census.gov/popest/data/national/asrh/2014/index.html.

[52] See calculations and data in Appendix C.

include significant numbers of immigrants who have not been naturalized. For example, about 24% of Latinos and 27% of Asian Americans are noncitizens.[53] A substantial number of these people, however, are eligible to become citizens. As of January 2013, approximately 13.1 million lawful permanent residents ("LPRs") lived in the United States, and 8.8 million—roughly two thirds—were eligible for naturalization.[54] The largest numbers come from Mexico (25.0% of the total), China (5.0%), the Philippines (4.4%), India (4.1%), the Dominican Republic (3.7%) and Cuba (3.1%).[55]

Many of these people will eventually complete the naturalization process and become U.S. citizens. Others, of course, will not. The naturalization process is complicated and requires applicants to clear a series of hurdles before they can become U.S. citizens. In general, to be eligible for naturalization, an immigrant must have continuously resided in the United States for at least five years after being admitted for permanent residence.[56] Applicants must also demonstrate "good moral character"[57] and an ability to read, write and speak basic English,[58] and pass a civic test to demonstrate "a knowledge and

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[53] *Id.*

[54] Bryan Baker & Nancy Rytina, Office of Immigration Statistics, Dep't of Homeland Sec., *Estimates of the Lawful Permanent Resident Population in the United States: January 2013*, at 1 (Sept. 2014).

[55] *Id.* at 4.

[56] 8 U.S.C. § 1427(a)(1).

[57] *Id.* § 1427(a)(3).

[58] *Id.* § 1423(a).

understanding of the fundamentals of the history, and of the principles and form of government, of the United States."[59] Applicants are also subject to a personal investigation by immigration authorities.[60] There is also a $595 filing fee and an $85 biometrics fee.[61] Many applicants may pay additional amounts or a lawyer or other advocate to assist them with the process, especially if complications arise.

Taken together, these requirements amount to substantial barriers that deter many otherwise eligible people from seeking to become citizens. A recent study of Latino immigrants found that 93% of those who had not yet naturalized said they would become citizens if they could.[62] When asked about their main reasons for not naturalizing, 26% cited personal reasons such as inability to speak English or the difficulty of the citizenship test.[63] Another 18% cited administrative barriers, chief among them the cost of the naturalization process.[64]

Regardless of whether they are eligible to naturalize or choose to do so, noncitizens who live in the

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[59] 8 C.F.R. § 312.2.

[60] 8 U.S.C. § 1446(a).

[61] *See* U.S. Citizen and Immigration Servs., Dep't of Homeland Sec., Form G-1055 (Dec. 18, 2014), *available at* http://www.uscis.gov/fees.

[62] Paul Taylor et al., Pew Hispanic Center, *An Awakened Giant: The Hispanic Electorate is Likely to Double by 2030*, at 21 (Nov. 14, 2012), *available at* http://www.pewhispanic.org/2012/11/14/an-awakened-giant-the-hispanic-electorate-is-likely-to-double-by-2030.

[63] *Id.*

[64] *Id.*

United States have a deep stake in their communities' government, just as citizens do. For example, immigrants have a vital interest in public education, and are deeply integrated into our educational systems. In 2009, 7.3 million children had a parent who was a noncitizen,[65] and children with at least one unauthorized immigrant parent made up 6.9% of students enrolled in kindergarten through 12th grade in 2012. Most of these (5.5% of all students) are U.S.-born children who are U.S. citizens at birth.[66] Immigrants also represent a key component of the American economy. In 2014, there were 25.7 million foreign-born persons, in the U.S. labor force, comprising 16.5 percent of the total.[67] Even undocumented immigrants significantly contribute to state and local taxes, collectively paying an estimated $11.84 billion in 2012.[68] In short, noncitizen immigrants are deeply enmeshed in American society, and

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[65] Immigration Policy Center, American Immigration Council, *Strength In Diversity: The Economic and Political Clout of Immigrants, Latinos, and Asians in the United States* 1 (Jan. 2012), *available at* http://immigrationpolicy.org/sites/default/files/docs/Strength_in_Diversity_updated_2012_0.pdf.

[66] Jeffrey S. Passel et al., *Unauthorized Immigrant Totals Rise in 7 States, Fall in 14*, at 16 (Pew Research Center 2014), *available at* http://www.pewhispanic.org/files/2014/11/2014-11-18_unauthorized-immigration.pdf. In Texas the share of students with unauthorized immigrant parents—at 13.1%—was significantly higher. *Id.* at 17.

[67] U.S. Bureau of Labor Statistics, *Foreign-Born Workers: Labor Force Characteristics—2014* (May 21, 2015). *available at* http://www.bls.gov/news.release/pdf/forbrn.pdf.

[68] Matthew Gardner et. al., Institute on Taxation and Economic Policy, *Undocumented Immigrants' State and Local Tax Contributions* 1 (Apr. 2015), *available at* http://www.itep.org/pdf/undocumentedtaxes2015.pdf.

states may reasonably conclude that they should not be excluded from representation in the political process.

CONCLUSION

The Court should reaffirm that the Fourteenth Amendment's "one-person, one vote" requirement is satisfied when districts are drawn so as to be approximately equal in total population. The decision of the District Court should be affirmed on that basis.

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APPENDIX A

The Leadership Conference on Civil and Human Rights Participating Member Organizations

(Bold names denote Executive Committee member organizations)

9 to 5 National Association of Working Women

A. Philip Randolph Institute

AARP

Advancement Project

Alaska Federation of Natives

Alpha Kappa Alpha Sorority, Inc.

Alpha Phi Alpha Fraternity, Inc.

American-Arab Anti-Discrimination Committee

American Association for Access Equity and Diversity (AAAED)

American Association of Colleges for Teacher Education

American Association of People with Disabilities

AAUW

American Civil Liberties Union

American Council of the Blind

American Ethical Union

American Federation of Government Employees

American Federation of Labor-Congress of Industrial Organizations

American Federation of State, County & Municipal Employees, AFL-CIO

American Federation of Teachers, AFL-CIO

American Islamic Congress (AIC)

American Jewish Committee

American Postal Workers Union, AFL-CIO

American Society for Public Administration

American Speech-Language-Hearing Association

Americans for Democratic Action

Americans United for Separation of Church and State

Amnesty International USA

Anti-Defamation League

Appleseed

Asian Americans Advancing Justice | AAJC

Asian Pacific American Labor Alliance

B'nai B'rith International

Bend the Arc

Brennan Center for Justice at New York University School of Law

Center for Community Change

Center for Law and Social Policy (CLASP)

Center for Responsible Lending

Center for Social Inclusion

Children's Defense Fund

Church of the Brethren-World Ministries Commission

Coalition of Black Trade Unionists

Coalition on Human Needs

Common Cause

Communications Workers of America

Community Action Partnership

Community Transportation Association of America

Compassion & Choices

Consortium for Citizens with Disabilities (CCD)

DC Vote

Delta Sigma Theta Sorority

Dēmos

Disability Rights Education and Defense Fund

Disability Rights Legal Center

Division of Homeland Ministries-Christian Church (Disciples of Christ)

Epilepsy Foundation of America

Equal Justice Society

FairVote: The Center for Voting and Democracy

Families USA

Federally Employed Women

Feminist Majority

Friends Committee on National Legislation

Gay, Lesbian and Straight Education Network (GLSEN)

General Board of Church & Society of the United Methodist Church

Global Rights: Partners for Justice

GMP International Union

Hip Hop Caucus

Human Rights Campaign

Human Rights First

Immigration Equality

International Association of Machinists and Aerospace Workers

International Association of Official Human Rights Agencies

International Brotherhood of Teamsters

International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW)

Iota Phi Lambda Sorority, Inc.

Japanese American Citizens League

Jewish Council for Public Affairs

Jewish Labor Committee

Judge David L. Bazelon Center for Mental Health Law

Kappa Alpha Psi Fraternity

Labor Council for Latin American Advancement

Laborers' International Union of North America

Lambda Legal

LatinoJustice PRLDEF

Lawyers' Committee for Civil Rights Under Law

League of United Latin American Citizens

League of Women Voters of the United States

Legal Aid Society – Employment Law Center

Legal Momentum

Matthew Shepard Foundation

Mexican American Legal Defense and Educational Fund

Muslim Advocates

NAACP

NAACP Legal Defense and Educational Fund, Inc.

NALEO Educational Fund

National Alliance of Postal & Federal Employees

National Association for Equal Opportunity in Higher Education

National Association of Community Health Centers

National Association of Consumer Advocates (NACA)

National Association of Human Rights Workers

National Association of Neighborhoods

National Association of Social Workers

National Bar Association

National Black Caucus of State Legislators

National Black Justice Coalition

National CAPACD

National Center for Lesbian Rights

National Center for Transgender Equality

National Center on Time & Learning

National Coalition for the Homeless

National Coalition on Black Civic Participation

National Coalition to Abolish the Death Penalty

National Committee on Pay Equity

National Committee to Preserve Social Security & Medicare

National Community Reinvestment Coalition

National Congress of American Indians

National Consumer Law Center

National Council of Churches of Christ in the U.S.

National Council of Jewish Women

National Council of La Raza

National Council of Negro Women

National Council on Independent Living

National Disability Rights Network

National Education Association

National Employment Lawyers Association

National Fair Housing Alliance

National Farmers Union

National Federation of Filipino American Associations

National LGBTQ Task Force

National Health Law Program

National Hispanic Media Coalition

National Immigration Forum

National Immigration Law Center

National Korean American Service and Education Consortium, Inc. (NAKASEC)

National Latina Institute for Reproductive Health

National Lawyers Guild

National Legal Aid & Defender Association

National Low Income Housing Coalition

National Network for Arab American Communities (NNAAC)

National Organization for Women

National Partnership for Women & Families

National Senior Citizens Law Center

National Sorority of Phi Delta Kappa, Inc.

National Urban League

National Women's Law Center

Native American Rights Fund

Newspaper Guild

OCA

Office of Communications of the United Church of Christ, Inc.

Omega Psi Phi Fraternity, Inc.

Open Society Policy Center

Paralyzed Veterans of America

Parents, Families, Friends of Lesbians and Gays

People for the American Way

Phi Beta Sigma Fraternity, Inc.

Planned Parenthood Federation of America, Inc.

PolicyLink

Poverty & Race Research Action Council (PRRAC)

Presbyterian Church (USA)

Pride at Work

Prison Policy Initiative

Project Vote

Public Advocates

Religious Action Center of Reform Judaism

Retail Wholesale & Department Store Union, AFL-CIO

SAALT (South Asian Americans Leading Together)

Secular Coalition for America

Service Employees International Union

Sierra Club

Sigma Gamma Rho Sorority, Inc.

Sikh American Legal Defense and Education Fund

Sikh Coalition

Southeast Asia Resource Action Center (SEARAC)

Southern Christian Leadership Conference

Southern Poverty Law Center

TASH

Teach For America

The Andrew Goodman Foundation

The Arc

The Association of Junior Leagues International, Inc.

The Association of University Centers on Disabilities

The Center for Media Justice

The Council of Parent Attorneys and Advocates Inc. (COPAA)

The National Conference for Community and Justice

The National PTA

The Voter Participation Center

TransAfrica Forum

Transportation Learning Center

Union for Reform Judaism

Unitarian Universalist Association

UNITE HERE!

United Brotherhood of Carpenters and Joiners of America

United Church of Christ-Justice and Witness Ministries

United Farm Workers of America (UFW)

United Food and Commercial Workers International Union

United Mine Workers of America

United States International Council on Disabilities

United States Students Association

United Steelworkers of America

Wider Opportunities for Women

Workers Defense League

YWCA USA

APPENDIX B

Amici Curiae Joining as Signatories

The following organizations join as individual signatories to this Brief:

AALDEF is a 41-year-old national civil rights organization that promotes and protects the civil rights of Asian Americans through litigation, legal advocacy, and community education.

Advancement Project is a next generation, multi-racial civil rights organization founded by veteran voting rights lawyers that seeks to fulfill America's promise of a caring, inclusive and just democracy.

The **American-Arab Anti-Discrimination Committee** ("ADC") is the country's largest Arab American civil rights organization. Founded in 1980 by United States Senator James Abourezk, ADC consists of members from all 50 states and has multiple chapters nationwide. ADC has been at the forefront of protecting the Arab-American community for over thirty-five years against discrimination, racism, and stereotyping.

The **American Federation of Labor and Congress of Industrial Organizations** is a federation of 56 national and international unions with a total membership of approximately 12.5 million working men and women employed across this country in all sectors of our economy. Union members are registered, active voters committed to the prosperity of this country.

The **American Jewish Committee**, founded in 1906, has a long record of support for the one person one vote principle and the full accountability of the political system to all persons.

The **Anti-Defamation League** ("ADL") was founded in 1913 to advance good will and mutual understanding among Americans of all creeds and races, and to combat racial and religious prejudice in the United States. ADL is vitally interested in protecting the civil rights of all persons and in ensuring that each individual receives equal treatment under the law regardless of race, sex, sexual orientation, gender identity, ethnicity, or religion.

Asian Americans Advancing Justice | Asian American Justice Center is a nonprofit, nonpartisan organization that seeks to promote a fair and equitable society for all by working for civil and human rights and empowering Asian American, Native Hawaiian, and Pacific Islander communities.

Farmworker Justice is a non-profit organization that seeks to empower migrant and seasonal farmworkers to improve their living and working conditions, immigration status, health, occupational safety, and access to justice.

Hispanic Federation, Inc. is a nonprofit membership organization that works to empower and advance the Hispanic community through public policy advocacy, leadership development and community revitalization projects. Established in 1990, Hispanic Federation ("HF") has grown to become one of the premier Latino organizations in the nation.

Lambda Legal Defense and Education Fund, Inc. ("Lambda Legal") is a national organization committed to achieving the recognition of the civil rights of lesbian, gay, bisexual and transgender people and those living with HIV through impact litigation, education and public policy work. Lambda Legal has designated racial justice and low-income ad-

vocacy as a program priority and is concerned about the negative impacts a ruling forbidding use of total population for redistricting purposes would have on the communities it represents.

LatinoJustice PRLDEF was founded in 1972. Its continuing mission is to protect the civil rights of all Latinos and to promote justice for the pan-Latino Community, especially across the Eastern United States. It has worked to secure the voting rights and political participation of Latino voters since 1972.

The **League of Women Voters of the United States** is a nonpartisan, community-based organization that encourages the informed and active participation of citizens in government and influences public policy through education and advocacy. Founded in 1920 as an outgrowth of the struggle to win voting rights for women, the League is organized in close to 800 communities and in every state, with more than 150,000 members and supporters nationwide. The League promotes an open governmental system that is representative, accountable, and responsive. The League has been a leader in protecting the right to vote for 95 years and seeking reform of the redistricting process at the state, local, and federal levels for more than three decades.

The **NALEO Educational Fund** is the leading nonprofit organization that facilitates full Latino participation in the American political process, from citizenship to public service.

The **National Association for the Advancement of Colored People** ("NAACP"), founded in 1909, is the nation's oldest and largest civil rights organization. The NAACP's principal objectives are to ensure the political, educational, social and eco-

nomic equality of all citizens; to achieve equality of rights and eliminate race prejudice among the citizens of the United States; to remove all barriers of racial discrimination through democratic processes; to seek enactment and enforcement of federal, state and local laws securing civil rights; to inform the public of the adverse effects of racial discrimination and to seek its elimination; to educate persons as to their constitutional rights and to take all lawful action to secure the exercise thereof. The NAACP has a long history of advocating to protect minority voting rights and to ensure effective legislative representation for African-Americans and other racial minorities.

The **National Association of Social Workers** ("NASW") is the largest association of professional social workers in the United States with over 130,000 members in 55 chapters. NASW develops policy statements on issues of importance to the social work profession. Consistent with those statements, NASW reaffirms that participation in electoral politics is consistent with fundamental social work values, such as self-determination, empowerment, democratic decision making, equal opportunity, inclusion, and the promotion of social justice.

The **National Immigration Law Center** is the primary national organization in the United States exclusively dedicated to defending and advancing the rights and opportunities of low-income immigrants and their families.

The **National Urban League** is an historic civil rights and urban advocacy organization dedicated to economic empowerment in historically underserved urban communities. Founded in 1910, the National Urban League improves the lives of more than two

million people annually through direct service programs that are implemented locally by more than 90 Urban League affiliates in 300 communities across 36 states and the District of Columbia.

People For the American Way Foundation ("PFAWF") is a nonpartisan civic organization established to promote and protect civil and constitutional rights, including the right to vote and equal protection of the laws. Founded in 1981 by a group of civic, educational, and religious leaders, PFAWF now has hundreds of thousands of members nationwide. Over its history, PFAWF has conducted extensive education, outreach, litigation, and other activities to promote these values and to help overcome barriers to voting and political participation.

The **Service Employees International Union** ("SEIU") represents nearly 2 million men and women who work in the service industries throughout the United States. SEIU members represents a diverse cross-section of the United States, in terms of race and ethnicity. Many SEIU members face historical barriers to voter registration, and voting itself, and would therefore be negatively affected were the Court to permit jurisdictions to use citizen-age voting population as an appropriate metric for redistricting. Likewise, a significant percentage of SEIU members reside in jurisdictions that would be dramatically affected by a shift in the longstanding practice of drawing district lines based on total population.

Southwest Voter Registration Education Project ("SVREP") Southwest Voter is the largest and oldest non-partisan Latino voter participation organization in the United States. It was founded by the late William C. Velasquez and other Mexican-American political activists to protect the voting

rights of Mexican-Americans in the Southwest and empower Latinos and other minorities by increasing their participation in the American democratic process. Southwest Voter fulfills its organization mission by mobilizing Latinos to register and vote, including in Texas, conducting non-partisan campaigns to raise Latino voting, and participating in litigation. SVREP opened its doors in 1974. Since then SVREP has registered 2.6 million Latinos, trained 150,000 Latino leaders and won 85 voting rights lawsuits.

Voting Rights Forward ("VRF") is a nonpartisan, civil rights organization committed to protecting the rights of all voters. VRF supports fair, honest, impartial and competitive redistricting plans.

APPENDIX C

Racial and Ethnic Demographic Data Relating to Voting Age And Citizenship Based On U.S. Census American Community Survey Estimates*

UNITED STATES			
	Citizen	Noncitizen	Total
Over 18	222,363,928	20,178,299	242,542,227
Under 18	71,711,555	1,875,057	73,586,612
Total	294,075,483	22,053,356	316,128,839
Citizens as a Percentage of Total Population			93.0%
Noncitizens as a Percentage of Total Population			7.0%
CVAP as a Percentage of Total Population			70.3%
Non-CVAP as a Percentage of Total Population			29.7%
Percentage of Persons Under 18 Who Are Citizens			97.5%

* LatinoJustice PRLDEF ("LJP") calculations based on U.S. Census American FactFinder 2013 1-Year American Community Survey Data; source data and charts from the U.S. Census American Factfinder 2013 1-Year American Community Survey Data on File with LJP. Race/ethnicity categories based on U.S. Census categories guided by the 1997 OMB Office of Management and Budget (OMB) Standards on race and ethnicity. See U.S. Census, http://www.census.gov/topics/population/race/about.html.

NON-HISPANIC WHITE			
	Citizen	Noncitizen	Total
Over 18	156,231,274	2,764,714	158,995,988
Under 18	38,145,588	250,835	38,396,423
Total	194,376,862	3,015,549	197,392,411
Citizens as a Percentage of Total Group Population			98.5%
Noncitizens as a Percentage of Total Group Population			1.5%
CVAP as Percent of Total Group Population			79.1%
Non-CVAP as a Percentage of Total Group Population			20.9%
Percentage of Persons in Group Under 18 Who Are Citizens			99.3%

LATINO/HISPANIC[†]			
	Citizen	Noncitizen	Total
Over 18	24,406,626	11,858,210	36,264.836
Under 18	16,758,222	963,354	17,721,576
Total	41,164,848	12,821,564	53,986,412
Citizens as a Percentage of Total Group Population			76.3%
Noncitizens as a Percentage of Total Group Population			23.7%
CVAP as a Percentage of Total Group Population			45.2%
Non-CVAP as a Percentage of Total Group Population			54.8%
Percentage of Persons in Group Under 18 Who Are Citizens			94.6%

[†] The terms "Hispanic" or "Latino" are used interchangeably as defined by the U.S. Census Bureau and "refer to a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin regardless of race." Karen R. Humes, Nicholas A. Jones & Roberto R. Ramirez, *Overview of Race and Hispanic Origin: 2010*, 2010 Census Briefs. 1. 2 (March, 2011), http://www.census.gov/prod/cen2010/briefs/c2010br 02.pdf.

ASIAN AMERICAN			
	Citizen	Noncitizen	Total
Over 18	8,730,439	3,909,498	12,639,937
Under 18	2,931,372	440,811	3,372,183
Total	11,661,811	4,350,309	16,012,120
Citizens as a Percentage of Total Group Population			72.8%
Noncitizens as a Percentage of Total Group Population			27.2%
CVAP as a Percentage of Total Group Population			54.5%
Non-CVAP as a Percentage of Total Group Population			45.5%
Percentage of Persons in Group Under 18 Who Are Citizens			86.9%

BLACK/AFRICAN AMERICAN			
	Citizen	Noncitizen	Total
Over 18	28,020,290	1,437,484	29,457,774
Under 18	10,278,511	183,086	10,461,597
Total	38,298,801	1,620,570	39,919,371
Citizens as a Percentage of Total Group Population			95.9%
Noncitizens as a Percentage of Total Group Population			4.1%
CVAP as a Percentage of Total Group Population			70.2%
Non-CVAP as a Percentage of Total Group Population			29.8%
Percentage of Persons in Group Under 18 Who Are Citizens			98.2%

AMERICAN INDIAN/ALASKAN NATIVE			
	Citizen	Noncitizen	Total
Over 18	1,737,385	83,140	1,820,525
Under 18	694,272	6,334	700,606
Total	2,431,657	89,474	2,521,131
Citizens as a Percentage of Total Group Population			96.5%
Noncitizens as a Percentage of Total Group Population			3.5%
CVAP as a Percentage of Total Group Population			68.9%
Non-CVAP as a Percentage of Total Group Population			31.1%
Percentage of Persons in Group Under 18 Who Are Citizens			99.1%

NATIVE HAWAIIAN AND OTHER PACIFIC ISLANDER			
	Citizen	Noncitizen	Total
Over 18	317,950	61,337	379,287
Under 18	138,389	8,074	146,463
Total	456,339	69,411	525,750
Citizens as a Percentage of Total Group Population			86.8%
Noncitizens as a Percentage of Total Group Population			13.2%
CVAP as a Percentage of Total Group Population			60.5%
Non-CVAP as a Percentage of Total Group Population			39.5%
Percentage of Persons in Group Under 18 Who Are Citizens			94.5%